

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DAVID RIVERA,

Plaintiff,

-v-

LESTER N. WRIGHT, et al.,

Defendants.

FILED

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U.S. DISTRICT COURT
W.D.N.Y.-BUFFALO

-PS-O-

DECISION AND ORDER
08-CV-0157M

On March 12, 2008, following the transfer of the instant action to this Court, the Court entered an Order granting plaintiff permission to proceed *in forma pauperis* and directing the Clerk of the Court to cause the United States Marshals Service to serve the summons and complaint on the named defendants. (Docket No. 5). The Order also noted that plaintiff had listed two John Doe defendants and identified one of them as an Elmira Correctional Facility physician who treated plaintiff (John Doe #1) and the other as a Five Points Correctional Facility physician who treated plaintiff (John Doe #2). The Court, therefore, pursuant to *Valentin v. Dinkins*, 121 F.3d 72 (2d Cir. 1997) (*per curiam*), directed the New York State Attorney General's office to use its best efforts to attempt to ascertain the names of the John Doe defendants and to provide an address at which said defendants can be served.¹

¹The Attorney General's Office was not directed to undertake the defense and indemnification of the John Doe defendants.

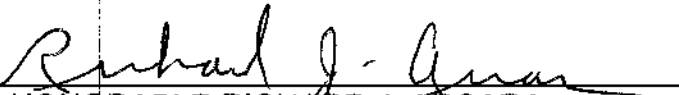
On April 11, 2008, the Attorney General's Office, Buffalo Regional Office, responded to the Court's Order and noted that John Doe #1 is either a physician's assistant by the name of Trudy Thornton or a nurse by the name of Sharon Newert, both of whom were employed at Elmira at the time of the events alleged in the complaint and provided treatment to plaintiff on the dates in question. The response also notes that if the Court determines that service is warranted on Ms. Thornton the Attorney General's Office will contact Ms. Thornton and ask if she will authorize it to accept service on her behalf. An address at which to serve Ms. Newert has not yet been ascertained. As to John Doe #2, he has been identified as physician assistant Herman Fowler who can be served at Five Points Correctional Facility.

Before the Court will direct the Clerk of the Court to amend the caption to include either Trudy Thornton or Sharon Newert, plaintiff must advise the Court which of the two (or both) he intended to sue in this matter. Once plaintiff advises the Court which of the two (or both) he intended to sue, the Court will direct the Clerk of the Court to amend the caption to include one or both as a defendant and direct that they be served. Plaintiff shall notify the Court which of the two (or both) he intended to sue herein on or before **May 20, 2008**. If plaintiff fails to respond to this Order by **May 20, 2008** and advise the Court which of the two (or both) he intended to sue in this matter, John Doe #1 will be dismissed without prejudice from this matter.

The Clerk of the Court is directed to both amend the caption to add "Herman Fowler, Physician Assistant, Five Points Correctional Facility" in the place of "John Doe #2," and to cause the United States Marshal Service to serve copies of the Summons, Complaint, and this Order upon Herman Fowler at Five Points Correctional Facility, 236 Bob Masia Dr., Pine City, New York 14871, without plaintiff's payment therefor, unpaid fees to be recoverable if this action terminates by monetary award in plaintiff's favor. **The Clerk of the Court shall prepare and issue the summons and prepare the United States Process Receipt and Return Form (USM-285), for service on Fowler.**

Pursuant to 42 U.S.C. § 1997e(g)(2), Fowler is directed to answer the complaint.

IT IS SO ORDERED.


HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

Dated: April 21, 2008